

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KARRI GARIS,

Plaintiff,

VS.

GYPSUM RESOURCES MATERIALS, LLC, *et al.*,

Defendants.

2:16-cv-02534-APG-VCF

REPORT AND RECOMMENDATION

This case was removed from state court on November 1, 2016. (ECF No. 1). Plaintiff Karri Garis filed an amended complaint on December 12, 2016. (ECF No. 11). Defendants Gypsum Resources Materials, LLC, James M. Rhodes, and Truckee Springs Holdings, Inc., filed their answer to the amended complaint on January 13, 2017. (ECF No. 13). On August 7, 2017, counsel for Defendants filed a motion to withdraw and the court granted it on August 22, 2017. (ECF No. 25). Gypsum Resources Materials, LLC and Truckee Springs Holdings, Inc. were ordered to retain counsel by September 22, 2017. *Id.* at 2.

Before the Court is Plaintiff's Motion to Strike Answer and Enter Default of Defendant's Gypsum Resources Materials, LLC and Truckee Springs Holdings, LLC (ECF No. 26). No opposition has been filed to the instant motion. To date, no counsel has entered an appearance for Gypsum and Truckee.

Discussion:

Under LR 7-2(d), The failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the motion. Here, no opposition has been filed to Plaintiff's Motion to Strike Answer and

1 Enter Default of Defendant's Gypsum Resources Materials, LLC and Truckee Springs Holdings, LLC
2 (ECF No. 26).

3 Pursuant to Local Rule IA 11-8(d) and Fed. R. Civ. P. 16(f), failure to comply with the court's
4 orders, after notice and opportunity to be heard, the court may impose any and all appropriate sanctions.

5 The court cannot enter default until the answer is stricken. Defendants Gypsum and Truckee filed
6 their answer on January 13, 2017. (ECF No. 13). An answer may be stricken if defendants fail to defend
7 themselves. *See Microsoft Corp. v. Marturano*, No. 06cv1747 OWW GSA, 2009 WL 1530040, at *2, 6
8 (E.D. Cal. May 27, 2009) (striking answer against defendant who persistently failed to participate in the
9 action); *Galtieri-Carlson v. Victoria M. Morton Enters.*, 08cv1777 FCD-KJN-PS, 2010 WL 3386473, at
10 *3 (E.D. Cal. 2010). In addition, when a corporation fails to retain counsel to represent it in an action, its
11 answer may be stricken and a default judgment entered against it. *Employee Painters' Trust v. Ethan*
12 *Enters., Inc.*, 480 F.3d 993 (9th Cir. 2007). Procedurally, courts have stricken the answers of corporate
13 defendants who have failed to defend themselves, directed entry of default, and then allowed the plaintiff
14 to move for default judgment. *See Rojas v. Hawgs Seafood Bar, Inc.*, No. C08-03819 JF (PVT), 2009
15 WL 1255538, at *1 (N.D. Cal. May 5, 2009) ("When a corporation fails to retain counsel to represent it
16 in an action, its answer may be stricken and a default judgment entered against it."); *Oracle America, Inc.*
17 *v. Serv. Key, LLC*, No. C12-790SBA, 2013 WL 1195620, at *2-3 (N.D. Cal. Mar. 22, 2013) (ordering that
18 if substitute counsel is not found, the court will strike answer and direct entry of default, and then plaintiff
19 may file a motion for default judgment).

20 A corporation cannot appear in federal court without counsel, *see Rowland v. Cal. Mens Colony,*
21 *Unit II Men's Advisory Counsel*, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part for
22 two centuries ... that a corporation may appear in federal courts only through licensed counsel."). Here,
23 Gypsum Resources Materials, LLC and Truckee Springs Holdings, Inc. have failed to retain counsel by
24 September 22, 2017, as ordered. (ECF No. 25). Gypsum and Truckee, as corporations must be
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1 represented by counsel in this court. Without counsel, they have failed to defend themselves, thus, it
2 is appropriate to strike their answer.

3 Accordingly, IT IS RECOMMENDED, that Plaintiff's Motion to Strike Answer and Enter Default
4 of Defendant's Gypsum Resources Materials, LLC and Truckee Springs Holdings, LLC (ECF No. 26) be
5 GRANTED.

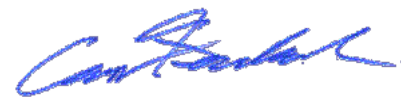
6 The Clerk of Court is directed to mail a copy of this order to the following address:

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8 Gypsum Resources Materials, LLC
9 Truckee Springs Holdings, Inc.
10 8912 Spanish Ridge Avenue, Suite 200
11 Las Vegas, NV 89148

12 **NOTICE**

13 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
14 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
15 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
16 may determine that an appeal has been waived due to the failure to file objections within the specified
17 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections
18 within the specified time and (2) failure to properly address and brief the objectionable issues waives the
19 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.
20 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,
454 (9th Cir. 1983).

21 DATED this 20th day of November, 2017.



22 CAM FERENBACH
23 UNITED STATES MAGISTRATE JUDGE
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